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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

JONATHAN SCOTT THREDE,	)	Case No.
individually and on behalf of all others	)	
similarly situated,	)	<b><u>CLASS ACTION</u></b>
	)	
Plaintiff,	)	<b>COMPLAINT FOR VIOLATIONS</b>
	)	<b>OF:</b>
vs.	)	
	)	1. Negligent Violations of the
MORTGAGENOW, INC WHICH	)	Telephone Consumer Protection
WILL DO BUSINESS IN	)	Act [47 U.S.C. §227(b)]
CALIFORNIA AS MNI MORTGAGE	)	2. Willful Violations of the Telephone
CORP.,	)	Consumer Protection Act [47
	)	U.S.C. §227(b)]
Defendants.	)	<b><u>DEMAND FOR JURY TRIAL</u></b>

Plaintiff JONATHAN SCOTT THREDE (“Plaintiff”), individually and on behalf of all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

**NATURE OF THE CASE**

1. Plaintiff brings this action individually and on behalf of all others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Defendant MORTGAGENOW, INC

1 WHICH WILL DO BUSINESS IN CALIFORNIA AS MNI MORTGAGE CORP.  
 2 (hereinafter “Defendant”), in negligently, knowingly, and/or willfully contacting  
 3 Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer  
 4 Protection Act, 47. U.S.C. § 227 *et seq.* (“TCPA”) and related regulations, thereby  
 5 invading Plaintiff’s privacy.

### 6 **JURISDICTION & VENUE**

7 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,  
 8 a California corporation with its principle place of business also in California, seeks  
 9 relief on behalf of a Class, which will result in at least one class member belonging  
 10 to a different state than that of Defendant, a company incorporated and based in  
 11 New Jersey. Plaintiff also seeks up to \$1,500.00 in damages for each call in  
 12 violation of the TCPA, which, when aggregated among a proposed class in the  
 13 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.  
 14 Therefore, both diversity jurisdiction and the damages threshold under the Class  
 15 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

16 3. Venue is proper in the United States District Court for the Northern  
 17 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does  
 18 business within the State of California and Plaintiff resides within the County of  
 19 Contra Costa.

### 20 **PARTIES**

21 4. Plaintiff JONATHAN SCOTT THREDE is an individual living in  
 22 Contra Costa County and is a “person” as defined by 47 U.S.C. § 153 (39).

23 5. Defendant MORTGAGENOW, INC WHICH WILL DO BUSINESS  
 24 IN CALIFORNIA AS MNI MORTGAGE CORP., is a business specializing in  
 25 residential mortgages and is a “person” as defined by 47 U.S.C. § 153 (39).

### 26 **FACTUAL ALLEGATIONS**

27 6. Beginning in or around June 2020, Defendants contacted Plaintiff on  
 28 Plaintiff’s cellular telephone numbers ending in -7292 in an attempt to solicit

1 Plaintiff to purchase Defendants' services.

2 7. Defendants used an "automatic telephone dialing system" as defined  
3 by 47 U.S.C. § 227(a)(1) to place its calls to Plaintiff seeking to solicit its services.

4 8. Defendants contacted or attempted to contact Plaintiff on multiple  
5 occasions, including June 30, 2020, July 1, 2020, July 2, 2020, July 7, 2020, July 8,  
6 2020, July 9, 2020, and July 10, 2020.

7 9. Defendants contacted or attempted to contact Plaintiff multiple times  
8 on the same day: three calls on June 30, 2020, five calls on July 7, 2020, four calls  
9 on July 8, 2020, and two calls on July 9, 2020.

10 10. Defendants contacted or attempted to contact Plaintiff from telephone  
11 numbers belonging to Defendants, including without limitation (213) 261-2428,  
12 (213) 261-2374, (213) 261-2402, (213) 294-7186, and (213) 375-1126.

13 11. Defendants' calls constituted calls that were not for emergency  
14 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

15 12. Defendants' calls were placed to telephone number assigned to a  
16 cellular telephone service for which Plaintiff incurs a charge for incoming calls  
17 pursuant to 47 U.S.C. § 227(b)(1).

18 13. During all relevant times, Defendants did not possess Plaintiff's "prior  
19 express consent" to receive calls using an automatic telephone dialing system or an  
20 artificial or prerecorded voice on its cellular telephones pursuant to 47 U.S.C. §  
21 227(b)(1)(A).

22 14. Defendants placed multiple calls soliciting its business to Plaintiff on  
23 its cellular telephones beginning in or around June of 2020.

24 15. Such calls constitute solicitation calls pursuant to 47 C.F.R. §  
25 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

26 **CLASS ALLEGATIONS**

27 16. Plaintiff brings this action individually and on behalf of all others  
28 similarly situated, as a member the class concerning the ATDS claim for no prior

1 express consent (hereafter “The Class”) is defined as follows:

2 All persons within the United States who received any  
3 solicitation/telemarketing telephone calls from Defendants to said  
4 person’s cellular telephone made through the use of any automatic  
5 telephone dialing system or an artificial or prerecorded voice and such  
6 person had not previously consented to receiving such calls within the  
7 four years prior to the filing of this Complaint

8 17. Plaintiff represents, and is a member of, The Class, consisting of all  
9 persons within the United States who received any solicitation telephone calls from  
10 Defendants to said person’s cellular telephone made through the use of any  
11 automatic telephone dialing system or an artificial or prerecorded voice and such  
12 person had not previously not provided their cellular telephone number to  
13 Defendants within the four years prior to the filing of this Complaint.

14 18. Defendants, their employees and agents are excluded from The Class.  
15 Plaintiff does not know the number of members in The Class, but believes the Class  
16 members number in the thousands, if not more. Thus, this matter should be certified  
17 as a Class Action to assist in the expeditious litigation of the matter.

18 19. The Class is so numerous that the individual joinder of all of its  
19 members is impractical. While the exact number and identities of The Class  
20 members are unknown to Plaintiff at this time and can only be ascertained through  
21 appropriate discovery, Plaintiff is informed and believes and thereon alleges that  
22 The Class includes thousands of members. Plaintiff alleges that The Class members  
23 may be ascertained by the records maintained by Defendants.

24 20. Plaintiff and members of The Class were harmed by the acts of  
25 Defendants in at least the following ways: Defendants illegally contacted Plaintiff  
26 and The Class members via their cellular telephones thereby causing Plaintiff and  
27 The Class members to incur certain charges or reduced telephone time for which  
28 Plaintiff and The Class members had previously paid by having to retrieve or

1 administer messages left by Defendants during those illegal calls, and invading the  
2 privacy of said Plaintiff and The Class members.

3 21. Common questions of fact and law exist as to all members of The Class  
4 which predominate over any questions affecting only individual members of The  
5 Class. These common legal and factual questions, which do not vary between  
6 ATDS Class members, and which may be determined without reference to the  
7 individual circumstances of any ATDS Class members, include, but are not limited  
8 to, the following:

- 9 a. Whether, within the four years prior to the filing of this  
10 Complaint, Defendants made any telemarketing/solicitation call  
11 (other than a call made for emergency purposes or made with  
12 the prior express consent of the called party) to a ATDS Class  
13 member using any automatic telephone dialing system or any  
14 artificial or prerecorded voice to any telephone number assigned  
15 to a cellular telephone service;
- 16 b. Whether Plaintiff and The Class members were damaged  
17 thereby, and the extent of damages for such violation; and
- 18 c. Whether Defendants and their agents should be enjoined from  
19 engaging in such conduct in the future.

20 22. As a person that received numerous telemarketing/solicitation calls  
21 from Defendants using an automatic telephone dialing system or an artificial or  
22 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting  
23 claims that are typical of The Class.

24 23. Plaintiff will fairly and adequately protect the interests of the members  
25 of The Class. Plaintiff has retained attorneys experienced in the prosecution of class  
26 actions.

27 24. A class action is superior to other available methods of fair and  
28 efficient adjudication of this controversy, since individual litigation of the claims of

1 all Class members is impracticable. Even if every Class member could afford  
2 individual litigation, the court system could not. It would be unduly burdensome to  
3 the courts in which individual litigation of numerous issues would proceed.  
4 Individualized litigation would also present the potential for varying, inconsistent,  
5 or contradictory judgments and would magnify the delay and expense to all parties  
6 and to the court system resulting from multiple trials of the same complex factual  
7 issues. By contrast, the conduct of this action as a class action presents fewer  
8 management difficulties, conserves the resources of the parties and of the court  
9 system, and protects the rights of each Class member.

10 25. The prosecution of separate actions by individual Class members  
11 would create a risk of adjudications with respect to them that would, as a practical  
12 matter, be dispositive of the interests of the other Class members not parties to such  
13 adjudications or that would substantially impair or impede the ability of such non-  
14 party Class members to protect their interests.

15 26. Defendants have acted or refused to act in respects generally  
16 applicable to The Class, thereby making appropriate final and injunctive relief with  
17 regard to the members of the Class as a whole.

18 **FIRST CAUSE OF ACTION**

19 **Negligent Violations of the Telephone Consumer Protection Act**

20 **47 U.S.C. §227(b).**

21 **On Behalf of Plaintiff and The Class**

22 27. Plaintiff repeats and incorporates by reference into this cause of action  
23 the allegations set forth above.

24 28. The foregoing acts and omissions of Defendants constitute numerous  
25 and multiple negligent violations of the TCPA, including but not limited to each  
26 and every one of the above cited provisions of 47 U.S.C. § 227(b), and in particular  
27 47 U.S.C. § 227 (b)(1)(A).

28 29. As a result of Defendants' negligent violations of 47 U.S.C. § 227(b),

1 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory  
2 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

3 30. Plaintiff and The Class members are also entitled to and seek  
4 injunctive relief prohibiting such conduct in the future.

5 **SECOND CAUSE OF ACTION**

6 **Knowing and/or Willful Violations of the Telephone Consumer Protection**  
7 **Act**

8 **47 U.S.C. §227(b)**

9 **On Behalf of Plaintiff and The Class**

10 31. Plaintiff repeats and incorporates by reference into this cause of action  
11 the allegations set forth above.

12 32. The foregoing acts and omissions of Defendants constitute numerous  
13 and multiple knowing and/or willful violations of the TCPA, including but not  
14 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,  
15 and in particular *47 U.S.C. § 227 (b)(1)(A)*.

16 33. As a result of Defendants' knowing and/or willful violations of *47*  
17 *U.S.C. § 227(b)*, Plaintiff and The Class members are entitled an award of \$1,500.00  
18 in statutory damages, for each and every violation, pursuant to *47 U.S.C. §*  
19 *227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

20 34. Plaintiff and the Class members are also entitled to and seek injunctive  
21 relief prohibiting such conduct in the future.

22 **PRAYER FOR RELIEF**

23 Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The  
24 Class members the following relief against Defendants, and each of them:

- 25 a. That this action be certified as a class action on behalf of The  
26 Class, and Plaintiff be appointed as the representative of The  
27 Class;  
28 b. As a result of Defendant's negligent violations of *47 U.S.C.*

1           §227(b)(1), Plaintiff and the Class members are entitled to and  
2           request \$500 in statutory damages, for each and every violation,  
3           pursuant to 47 U.S.C. 227(b)(3)(B);

- 4           c. As a result of Defendant's willful and/or knowing violations of  
5           47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled  
6           to and request treble damages, as provided by statute, up to  
7           \$1,500, for each and every violation, pursuant to 47 U.S.C.  
8           §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C);
- 9           d. For actual damages according to proof;
- 10          e. For reasonable attorneys' fees and costs of suit;
- 11          f. For prejudgment interest at the legal rate; and
- 12          g. Any and all other relief that the Court deems just and proper.

13                                   **JURY DEMAND**

14          35. Pursuant to the Seventh Amendment to the Constitution of the United  
15          States of America, Plaintiff is entitled to, and demands, a trial by jury.

16          Respectfully submitted this 15th day of September, 2020.

17  
18                                   LAW OFFICES OF TODD M. FRIEDMAN, P.C.

19                                   By: /s/ Todd M. Friedman  
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